

ORDINANCE NO. 374

AN ORDINANCE GRANTING TO GENERAL TELEPHONE COMPANY OF THE NORTHWEST, INC., ITS SUCCESSORS AND ASSIGNS, A FRANCHISE OF DOING A TELEPHONE AND TELEGRAPH BUSINESS WITHIN THE CITY OF BROOKINGS AND EXERCISING THE PRIVILEGES APPURTENANT THERE-TO.

The City of Brookings does ordain as follows:

Section 1: Permission and authority are hereby granted to the General Telephone Company of the Northwest, Inc., a corporation, its successors and assigns, upon the terms and subject to the conditions of this ordinance, to construct, erect, renew, repair, maintain and operate in, upon, along, across, under and over the streets, alleys, viaducts and elevated roadways and other public ways of the municipality for a period of twenty (20) years from and after the effective date of the passage of this ordinance, unless sooner terminated as hereinafter provided, its lines of poles, anchors, wires, cables, conduit, vaults, laterals and other fixtures and equipment, and to use its said property for the transmission of sound and signals or other means of communication by means of electricity.

Furthermore, on the fifth year, tenth year and fifteenth year anniversary of the effective date of the passage of this ordinance, General Telephone Company of The Northwest, Inc. and the City of Brookings may, upon mutual consent expressed in written notice given one to the other, negotiate further changes, amendments, deletions or additions here- to upon the passage of a further supporting ordinance.

Section 2: The location of said lines, of poles, anchors, wires, cables, conduit, vaults, laterals and other fixtures and equipment, and the construction thereof, or any change or extension (or the removal thereof), in case said removal shall necessitate the substantial disturbance of any street, alley, viaduct, elevated roadway, bridge or other public way shall be subject to the approval of the Brookings City Manager under grant of such authority as may be enacted, from time-to-time, by motion of the Brookings City Council.

The company shall place on file with the City plans showing the location and character of each pole and each conduit to be erected or laid, and the number of ducts in each conduit and the location of manholes or other openings to gain access to said conduit; and no pole, conduit, vault or anchor shall be erected, constructed or laid upon or in any street, alley, viaduct, elevated roadway, bridge or other public way or any such tunnel, until a permit therefor is issued which shall indicate the time, manner and place of

laying, constructing or erecting the said conduit, pole, vault or anchor.

If the location of any poles, anchors, wires, cables, conduit, vaults, laterals and other fixtures, or the erection, laying or removal of the same, does not interfere unreasonably with ordinary travel and/or use of the streets, alley, viaducts, elevated roadways, bridges and public ways or any such tunnels of the city and otherwise complies with this ordinance, the Brookings City Manager shall approve the same and/or issue a permit or permits therefor.

Section 3: Whenever the company erects its wires, cables, or electrical conductors over or above any building within the municipality, with the consent of the owner or owners thereof, said wires, cables or electrical conductors shall be kept at least eight feet above the surface of the roof of such building, except in such building as the wires are to enter, and except over any garages or out buildings.

The company agrees that in all cases (except as hereinafter expressly otherwise provided) where the municipality shall change the grade or width of any street, alley or other public way, the company will, promptly and at its own expense, unless otherwise by ordinance provided, change or move its structures so as to conform thereto, and all sidewalks, parkways or pavements disturbed by the company shall be restored by it to a good condition, and in the event that any such sidewalk, parkway or pavement shall become uneven, unsettled, or otherwise require repairing because of such disturbance by the company, then the company shall promptly, upon receipt of notice from the municipality so to do, cause said sidewalk, parkway or pavement to be repaired or restored to a good condition. The company further agrees that it will, in advance of any paving or repaving of any street, alley or other public way, and upon reasonable notice thereof, install and construct, at its own expense, all conduit, vaults and manholes reasonably necessary for its future use in said street, alley, or other public way, so as to prevent, so far as possible, the disturbance by the company of any pavement.

Section 4: When any opening is made or work done in, on or under any street, alley, viaduct, elevated roadway, bridge or other public way, or any public tunnel under the Chetco River or its several branches and/or other rivers for any purpose whatsoever by the company, said street, alley, viaduct, elevated roadway, bridge or other public way or any such tunnel shall be restored as promptly as possible to a condition satisfactory to the Brookings City Manager at the expense of the company.

Whenever the General Telephone Company of the Northwest, Inc., a corporation, its successors, assigns, or agents shall disturb any of the streets, alleys, or public highways for

the purposes aforesaid, it or they shall, without delay, put the same in as good conditions as it was before it was so broken up, dug, or disturbed, and shall remove from the street all surplus earth, rubbish, or material caused thereby.

Nothing in this ordinance shall be construed in any way to prevent the proper authorities of said city from sewerage, grading, planking, paving, repairing, altering, or improving any of the streets, alleys, avenues, thoroughfares, public highways, or places within said city, in or upon which the poles, wires, or other conductors of said company are or shall be placed; and said company shall, upon receiving one week's notice, in writing, from the city mayor or other official of the municipality having charge of said grading or improvement, remove such pole or poles or other obstruction; and if said company, its successors and assigns, upon such notice shall refuse or neglect to remove such pole or poles or other obstruction, then the same shall be removed by the city at the expense of said company.

Whenever it becomes necessary to temporarily rearrange, remove, lower, or raise the wires, cables, or other plant of the General Telephone Company of the Northwest, Inc., a corporation, its successors and assigns, for the passage of building, machinery or other objects, the said company, its successors and assigns, shall temporarily rearrange, remove, lower, or raise its wires, cables, or other plant as the necessities of the case require; provided, however, that the person or persons desiring to move any buildings, machinery, or other objects shall pay the entire actual cost to the said company, its successors and assigns, of changing, altering, moving or replacing its wires, cables, or other plant so as to permit such passage, and shall deposit in advance with said company, its successors and assigns, a sum equal to such cost as estimated by said company, its successors and assigns, and shall pay all damages and claims of every kind whatsoever direct or consequential, caused directly or indirectly by the changing, altering, moving, removing, or replacing of said wires, cables, or other plant, except as may be occasioned through the negligence of said company, its successors and assigns, so as to permit such passage. Said company, its successors and assigns, shall be given not less than one week's written notice by the party desiring to move such building or other objects. Said notice shall detail the route of movement of such building or other objects over and along the streets and shall bear the approval of said city by the city mayor or other authorized city official. Such moving shall be with as much haste as possible and shall not be unnecessarily delayed or cause the said company, its successors and assigns, unnecessary expense or waste of time. The provisions of this section shall be carried out in accordance with the ordinances of the said city regulating such matters.

This section shall not apply to the said city when engaged in the performance of any public work as in this franchise provided.

Section 5: The company shall, at its own expense, indemnify and save harmless the municipality from any and all damages, judgments, costs and expenses of every kind, which may arise or result by reason of or in consequence of the acts or neglect of the company, its agents or servants to fully **comply** with the provisions of this ordinance, and will save and keep harmless the municipality from any and all damages, judgments, costs and expenses caused by, or incident to, or in any manner resulting from, the erection of such poles, the laying of such conduit, and the stringing, constructing and operating of said cables, anchors, wires and electrical conductors, vaults, laterals, fixtures and equipment, and the maintenance thereof, provided prompt notice in writing of all claims for such damages, costs and expenses, and reasonable opportunity to defend against the same are given the company by the city, together with all information thereon in its possession.

The company hereby expressly waives and releases any and all claims which it now has or may hereafter acquire against the city, arising from or growing out of any damages to the property of the company resulting from any act or omission of the city, its agents and employees, occurring prior to the date of the passage and acceptance of this ordinance.

Section 6: The permission and authority herein granted are upon the express condition that the company, as consideration therefor, and as compensation for the use herein granted of city streets, alleys, viaducts, elevated roadways, bridges, and other public ways, shall pay into the municipal treasury a sum equal to three percent of its gross local exchange service receipts and operating revenues which are hereby defined to mean all amounts of money which the company receives or becomes lawfully entitled to receive (whether collected or not) for services rendered resulting from the use of its plant and properties within the city for the transmission of sound and signals or other means of communication by means of electricity.

The company shall file with the municipality a sworn statement of such gross local service receipts after the end of each calendar month and within fifteen days after the close of said monthly period; and further, said sworn statement shall be in such form and detail as shall from time-to-time be prescribed by the Brookings City Manager. Of its said gross local exchange service receipts for the calendar month next proceeding, which shall include all of said gross operating revenues of the local exchange of the company, as such toll service revenues are apportioned to the local exchange upon the basis currently used by the company in its settlement

with connecting telephone companies, and the miscellaneous operating revenues, and said statement shall include in any subdivision of or addition to said accounts, or included in accounts covering gross operating revenues established from time to time in lieu of and in addition to said accounts by the interstate commerce commission, or other regulatory body vested with authority with respect to the accounts of telephone companies.

Payments upon said monthly statements shall be made upon an annual basis and shall be paid for the preceeding year on or before the fifteenth day of March of each and every year from the calendar year so preceeding. Furthermore, the company agrees that during the term of this ordinance it will make no charge for calls made from any of its telephones within the city for the sole purpose of giving police or fire alarms and reports, provided that such calls are made to telephone numbers designated by the company, one for fire and one for police purposes.

Section 7: Nothing in the ordinance contained shall be construed or taken as preventing the city whenever it shall be empowered by law so to do, from establishing, fixing, prescribing or regulating, or causing the establishing, fixing, prescribing or regulating of, the rates, rentals or charges of telephone companies for any service, instruments, facilities or equipment, or regulating and controlling the plant, facilities, extensions, additions, betterments, equipment, appliances, services, rules, regulations, methods or practices of telephone companies as public utilities, or from licensing or taxing telephone companies; it being the intention of the parties that the city in no way surrenders any right it may now have or may hereafter acquire to license, tax and/or regulate telephone companies; provide, however, that (except as in this ordinance expressly otherwise provided) as long as the company shall make the payments required by this ordinance, the city shall not, by any general or special ordinance, impose any license or inspection fee or license or inspection tax or any regulation requiring the payment by the company of any compensation to the city additional to that provided by section 6 of this ordinance. Nothing in this ordinance, however, shall be construed as preventing the city from granting permission and authority to any other person, firm or corporation to construct, erect, renew, repair, maintain and operate lines of poles, anchors, wires, cables, conduit, vaults, laterals, and other fixtures and equipment in, upon, along, across, under and over the streets, alleys, viaducts and elevated roadways and other public ways of the city and under the Chetco River and tis several branches and/or other rivers, and on any fixed bridges thereover, as the same may exist from time to time, for the transmission of sound and signals or other means of communication by means of electricity.

Section 8: In the event that the company shall make default in the observance or performance of any one or more of the agreements, duties or obligations imposed upon it by any of the provisions or conditions of this ordinance, and if any such default or defaults shall continue for a period of six months (exclusive of all times during which the company may be delayed or interfered with, without its connivance, by unavoidable accidents, acts of God or the public enemy, labor strikes or the orders or judgments of any commission of court entered in any suit or proceeding brought without its connivance) after written notice thereof to the company from the city, stating the alleged default on the part of the company, then and in each and every such case the city in addition to all other rights and remedies allowed by law, shall be entitled to terminate the grant made to the company in and by this ordinance, and all rights and privileges of the company under this ordinance shall thereupon be at an end.

Section 9: Nothing herein contained shall be construed as authorizing the company, its employees or agents to violate any Ordinance of the City herewith now in existence or hereafter enacted; and further, the company shall not violate any provisions of the Oregon Anti-Trust Law codified in ORS 646.705 to 646.836 nor shall the granting of this franchise be in any way construed as in violation thereof; and further, the company shall not infringe, violate or engage in any activity prohibited by the Oregon Unlawful Trade Practices Act as defined in ORS 646.605 to 646.652, this franchise being subject to the sanctions contained within such statutory provisions including, but not limited to, ORS 646.646.

This franchise is subject to said above-stated terms and statutory provision; and further, should any part hereof contravene such terms or provisions then any provisions herein contained contrary thereto shall be deemed null and void.

Section 10: Notwithstanding anything herein stated to the contrary, City shall retain all of its rights and remedies under ORS 221.420 to 221.470. The City shall retain its general municipal police powers and the exercise of such over the erection, installation, replacement and maintenance of poles, wires and similar apparatus of the company in streets, alleys and public way; and further, such police power shall extend to the designation of on what parts of streets there may be erected poles, lines, conduits or other apparatus or, in proper cases, to require relocation thereof, and compel all generally accepted improvements which tend to decreased the obstruction of the streets or increase the safety or convenience of the public in their use; and further, said power shall extend, although not be limited to, the regulation of the use, location, height and size of utility poles as part of the City's general planning and zoning process and power.

Section 11: General Telephone Company of the Northwest, Inc., shall file its acceptance of this ordinance and the conditions and terms herein contained within thirty days from the date of the passage hereof; otherwise, this ordinance shall be null and void.

Section 12: It is hereby determined that it is in the interests of the public welfare, peace and safety of the City of Brookings that this ordinance be immediately adopted because the continued service of telephone and telegraphic communication and supply to and within the City of Brookings is of paramount importance to the citizens of the city and therefore an emergency is declared to exist, and that this ordinance shall be in full force and effect from and after the date of its passage.

First Reading: June 14, 1983

Second Reading: June 14, 1983

Passage: June 14, 1983

Signed by me in authentication of its passage this 14th day of June, 1983.

Bob Kess
Mayor

ATTEST:

Naomi Bradford
City Recorder